Supreme Court, U.S.
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No. 06-455

IN THE

Supreme Court of the United States

MICHAEL D. HAMILTON,

Petitioner,

v.

ROYAL INTERNATIONAL PETROLEUM CORPORATION and ELMER B. LITCHFIELD, SHERIFF and TAX COLLECTOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF IN OPPOSITION

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COUNTER STATEMENT OF THE QUESTION PRESENTED

The Petitioner presents no constitutional question to the Court in its Writ Application. The State action of taking was complete at the tax sale. The tolling of the right of redemption is not a taking, as such right involves no State action. The failure to exercise such right by a tax debtor does not constitute a taking by the State, and as such, the failure to send notice thereof to the tax debtor, although required by statute, has no constitutional implications under ***Mennonite*** or the Fourteenth Amendment of the United States Constitution.

The Louisiana Constitution provides a right to redeem property sold for delinquent taxes; however, such right of redemption exists between two private parties where property is sold at a tax sale to a third party purchaser. The right of redemption does not exist until the property is actually sold by the Sheriff. The Due Process Clause of the Fourteenth Amendment requires the government to provide an owner (tax debtor) with notice and an opportunity to present his objections to the taking before the State could seize and sell such property for delinquent taxes.

The Petitioner received notice of the pending seizure and sale prior to the 1995 Tax Sale and the constitutionality of the statutes which govern said Tax Sale were not challenged by the Petitioner. As such, the statutory duty of the Sheriff to give notice of a right to redeem has no constitutional implications under ***Mennonite*** or the United States Fourteenth Amendment of the Constitution (Due Process Clause) where the right of redemption did not exist prior to the completion of the State action of taking.

STATEMENT PURSUANT TO RULE 29.6

Respondent, Royal International Petroleum Corporation, has no parent corporation and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

COUNTER STATEMENT OF THE QUESTION PRESENTED i

STATEMENT PURSUANT TO RULE 29.6 ii

TABLE OF CONTENTS iii

TABLE OF CITED AUTHORITIES iv

SUMMARY OF REASONS TO DENY THE PETITION 1

STATEMENT OF THE CASE 2

A. Factual Background 2

B. Procedural Background 5

REASONS FOR DENYING THE PETITION 8

I. The Petition for a Writ of Certiorari presents no constitutional issue to this Court. 8

II. A statute does not create a constitutional due process right, such rights are limited to the State action of taking. 10

III. Under Louisiana law, unlike most common law states, ownership transfers at the completion of the tax sale. 12

CONCLUSION 16

TABLE OF CITED AUTHORITIES

Page

Cases:

Deshaney v. Winnebago County Department of Social Services, et al., 489 U.S. 189 (1989) 11, 12, 13

Jones v. Flowers, 547 U.S. __, 126 S. Ct. 1708 (2006) 1, 9, 10

Logan v. Zimmermann Brush Company, 455 U.S. 422 (1982) 1, 9, 10, 11

Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983) 2, 8, 9

Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950) 2, 9, 10

Parratt v. Taylor, 451 U.S. 527 (1981) 9-10, 12

United States Constitution:

Fourteenth Amendment ..... i, 1, 7, 10, 11, 12, 15

Cited Authorities

Page

Statutes:

La. C.C. art. 476 ..... 12, 13

La. C.C. art. 477 13

La. C.C. art. 478 13

La. C.C. art. 2439 14

La. C.C. art. 2456 14

La. R.S. 13:4448 7

La. R.S. 47:2180 *et seq.* 3, 5

La. R.S. 47:2180(A)(1)(b) 6, 11

La. R.S. 47:2183(A) 14

La. R.S. 47:2185 14

BRIEF IN OPPOSITION

Summary of Reasons to Deny the Petition

In its decision, the Louisiana Supreme Court concluded that the Petitioner received actual notice of the impending tax sale of his property and does not have a constitutional due process claim. The Louisiana Supreme Court held:

> **"It was undisputed the tax collector was in strict compliance in notifying [Petitioner] of his property taxes and the pending sale if the delinquent taxes were not paid" and "... fundamental due process is not required to inform [Petitioner] ... that he may redeem his property for a period of less than one year."** 934 So. 2d 32 [emphasis added]

The existing right of redemption was created between two parties after the culmination of the State action and taking. The failure of the State, acting through the Sheriff, to comply with its statutorily imposed duty to provide notice of a right to redeem, where the legislature has imposed no penalty for the State's failure to comply therewith, does not present a constitutional issue. Thus, the Court should deny Petitioner's Petition because the case does not qualify for review in this Court.

The conclusion of the Louisiana Supreme Court does not fundamentally differ from this Court's holding in ***Logan v. Zimmermann Brush Company***, 455 U.S. 422 (1982) and/or with this Court's holding in ***Jones v. Flowers***, 547 U.S. __, 126 S. Ct. 1708 (2006), as neither case involved property rights existing between private party ownership claims. This Court has held that prior to an action [taking by the State] which will affect an interest in property protected by the Due Process Clause of the Fourteenth Amendment, a

State must provide notice reasonably calculated, under all circumstance, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. ***Mullane v. Central Hanover Bank and Trust Co.,*** 339 U.S. 306, 313 (1950); ***Mennonite Board of Missions v. Adams,*** 462 U.S. 791, 801 (1983).

The record is clear that Petitioner received the statutory and constitutional notice prior to the date of the tax sale. Unlike any case cited in the Writ Application by Petitioner, Louisiana law transfers ownership of the property on the date of the tax sale. The subsequent right of redemption granted to a former tax debtor is a right existing between the tax debtor and the tax sale purchaser. Regardless of the exercise of the right of redemption by the former owner, amendment to the statute mandating notice by the Sheriff could not and did not change the rights existing between the parties hereto (tax sale purchaser/debtor), and as such, Petitioner presents no constitutional issue upon which this Court could grant relief. Therefore, this Court should deny said Petition because the case does not qualify for or otherwise merit review in this Court.

STATEMENT OF THE CASE

A. Factual Background

In December of 1994, Michael Hamilton, the Petitioner in the underlying suit, received a standard property tax notice from the East Baton Rouge Parish Tax Collector's office informing him that ad valorem taxes on his home were due and unpaid. The written notice of tax delinquency in 1995 (which was sent via certified mail and received by Petitioner) specifically stated that the taxes on the subject property were required to be paid within 20 days after the mailing or service of said notice, or **else the property would be sold according**

to law. However, despite receiving notice regarding his delinquent taxes, the Petitioner failed to pay the taxes due.

Because the ad valorem taxes due on the Petitioner's immovable property remained unpaid and delinquent, a tax sale was held on June 12, 1995. Royal International Petroleum Corporation (hereinafter referred to as "RIPCO") purchased the subject property at the 1995 Tax Sale. Said sale was recorded in the Conveyance Records of East Baton Rouge Parish, State of Louisiana, on June 30, 1995, in Bundle 10606, Original 362. Thus, on the date of the tax sale RIPCO became the full owner of the property, subject to a three-year right of redemption in favor of the Petitioner, which right of redemption was also created at the time of the tax sale.

The amount paid at the original Tax Sale was $71.68 (consisting of $27.09 in unpaid taxes, plus Sheriff's costs and statutory penalties). Petitioner, in an effort to appeal to the equitable fairness and emotions of the Court, has continuously made reference to the small amount of money owed in taxes which caused the Sheriff to sell his immovable property. However, the amount paid at the tax sale is an irrelevant factor to determining the legal consequences of a tax sale. Of importance is the fact that Petitioner received all of the necessary statutory and constitutional notice of his delinquency of the taxes due **prior** to the 1995 Tax Sale (Record. 33). It was not disputed by the Petitioner at trial that the Notice of Delinquency of Taxes satisfied all statutory requirements as set forth in La. R.S. 47:2180 *et seq.* (as it existed in 1995). Petitioner states in his Writ Application to the Court that he did not believe from the Sheriff's delinquency notice that his home would be sold for

delinquent taxes; however, such statement is patently false as evidenced by the Record.[1]

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1. Furthermore, the Petitioner, while under direct examination stated:

MR. MCGLYNN: Now, I understand that this is not actually the notice that was sent to you but that this is simply an exemplary notice. Would you read the words that — advising what you are instructed about?

MR. HAMILTON: If not paid within twenty days from the date of this notice, I shall seize, advertise and sell sufficient property to pay said taxes together with all the interest, penalties and costs.

MR MCGLYNN: Assuming that you did in fact receive this, did this in any way apprise you that your house was going to be seized and sold?

(Objection and Argument)

MR. MCGLYNN: Did you understand that this language could possibly mean that your house would be seized and sold?

MR. HAMILTON: *Yes.*

MR. MCGLYNN: You understood that is what this language meant, that your house would be seized and sold?

MR. HAMILTON: They were going - my house was going to be sold, or something was going to happen there.

(Record. 86-88). Thus, the Trial Court found that Petitioner was well aware of the fact that his house would be sold at tax sale in light of his failure to pay the delinquent taxes due in 1995. (Oral Reasons for Judgment)

Even after the Petitioner's right to redeem prescribed, RIPCO offered Petitioner the opportunity to reacquire the property via Quitclaim Deed for the sum of $2,555.24, which amount included the taxes paid on the subject property from the date of the tax sale, the statutory interest (calculated as if Petitioner were redeeming the property at 1% per month), plus RIPCO's expenses of obtaining an abstract and attorney fees for examining such abstracts and preparation of the Quitclaim Deed. Petitioner did not accept the offer and instead elected to institute the present suit.

At the time of the tax sale in 1995, La. R.S. 47:2180 did not require any subsequent notice of a right to redeem. The statute was amended requiring such subsequent notice in August of 1997. Irion Bordelon, an agent for RIPCO, did offer Petitioner the right to redeem said property both before and after the legal redemptive period had run (TR. 61). The Petitioner, however, did not redeem the property within the three-year period of time, and as such, any right to redeem prescribed in favor of RIPCO, the sole owner of all right, title and interest in and to said property.

B. Procedural Background

After the three (3) year period to redeem the property from RIPCO had expired, Petitioner instituted Suit to Annul the 1995 Tax Sale. The parties hereto, alleging no factual dispute, filed three (3) Motions for Summary Judgment, all which were denied by the Trial Court. A trial on the merits followed, at which the sole issue presented to the Court by the Petitioner was an allegation that Petitioner did not receive adequate notice of his right to redeem as a result of the

Sheriff's alleged failure to follow the provisions of La. R.S. 47:2180(A)(1)(b) as revised in 1997.[2] The Trial

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2. During trial on this matter, Petitioner explicitly stated at the trial that he was not contesting the constitutionality of the pre-tax sale notice statutory scheme. At the trial of this matter, counsel for RIPCO objected to the raising of such a constitutional challenge, to– wit:

MR. BLAIZE: Your honor, my lack of foundation argument – excuse me, objection is based on the fact that they have not put forth any evidence saying that they notified the attorney general, as required by statute, in order to put forth a constitutional claim under 1344:48 [sic], and, therefore they don't – until they put it forward, they have not laid a foundation for the question, as to the constitutionality of the statutes.

THE COURT: They're not challenging the constitutionality of the statute, as I understand it, or at least the value is not going to the constitutionality of the statute, its merely to the due process argument under the federal constitution for a taking of value, which is what I understood it to be. Is that correct, Mr. McGlynn.

MR MCGLYNN: That would be correct.

(R. 84-85).

MR. BLAIZE: Objection, your Honor. I reissue the lack of foundation argument. Now he is definitely trying to assert the unconstitutionality of the statute dealing with the Tax Sale, R.S. 2180, I believe is what he's doing.

MR MCGLYNN: This doesn't go to the constitutionality of the statute so much as it does the ineffectiveness of their attempts to comply with it.

(R. 87).

Court did not discuss the constitutionality of the pre-sale tax notice statutes as same was not properly pled under La. R.S. 13:4448. La. R.S. 13:4448 requires a party to give notice by certified mail to the Attorney General prior to challenging the constitutionality of a statute, thus granting the State an opportunity to participate in such proceeding. No such notice was mailed to the Attorney General, and as such, any constitutional challenge to the statute was not properly pled. Judgment was rendered in favor of RIPCO, for oral reasons assigned, dismissing Petitioner's suit with prejudice.

Since the statutes effectuating notice prior to the tax sale were properly followed, the constitutional challenge presented by Petitioner herein must be that the statutes themselves are unconstitutional. Page 6 of Petitioner's Brief, states that he specifically alleged that the Sheriff, in violation of the Due Process Clause of the Fourteenth Amendment, had not afforded him adequate notice of the threatened loss of his house, of the date, time, and place of the tax sale, and of the manner of redemption. The Louisiana tax sale statutes do not require that the notice contain the date, time and place of sale, but does include the address where a delinquent tax payer could pay such taxes and obviate the impending sale.

The First Circuit Court of Appeal of Louisiana reversed the Trial Court's decision, for reasons assigned, declared the sale was invalid and remanded the case to the District Court for payment of constitutional taxes and interest due (609 So. 2d 630). A dissenting opinion was also issued, stating that the Judgment rendered by the Trial Court was fully supported by the facts and in accord with the law that governs this dispute and that same should be affirmed (609 So. 2d 627, 2003-2660 (La. App. 1 Cir. 3/2/05).

The Louisiana Supreme Court reversed the First Circuit stating:

> "It was undisputed the tax collector was in strict compliance in notifying [Petitioner] of his property taxes and the pending sale if the delinquent taxes were not paid" and ". . . fundamental due process is **not** required to inform [Petitioner] . . . that he may redeem his property for a period of less than one year." 934 So. 2d. 32 [emphasis added]

REASONS FOR DENYING THE PETITION

I. The Petition for a Writ of Certiorari presents no constitutional issue to this Court.

People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property, but before forcing a citizen to satisfy his debt by forfeiting his property, due process requires that the government provide notice of the impending taking. U.S. Constitution Amendment 14; ***Mennonite Bd. of Missions v. Adams***, 462 U.S. 791, 799, (1983). Therefore, under ***Mennonite***, as Petitioner received, by certified mail, a notice which stated that Petitioner could obviate the taking (tax sale) by payment of taxes within twenty (20) days of receipt of such notice, his due process rights were properly afforded to him. Without directly challenging the constitutionality of the requirements set forth in the statutes regarding notice, Petitioner has stated no constitutional challenge regarding the sufficiency of the pre-sale notice.

Petitioner argues that the Louisiana Supreme Court decision resulted in a failure to protect his right of redemption thus violating his due process rights. The right of redemption

is generally viewed as a vested property right, of which the owner of such right could not be legally deprived by government action without the giving of notice; however, such deprivation is limited in the cases cited by Petitioner to factual scenarios whereby the State is taking the redemptive right. The Petitioner cites no case contradictory to the decision of the Louisiana Supreme Court decision in this case. The redemptive right herein is conferred by the Louisiana Constitution and perfected **after** the date and time of the taking and/or **after** the State action is completed.

The decision of the Louisiana Supreme Court at issue herein is not in conflict with this Court's due process holding in ***Logan v. Zimmermann Brush Company***, 455 U.S. 422, 432 (1982). The ***Logan*** court held that the Due Process Clause of the United States Constitution contains a two part inquiry: Whether a party was deprived of a protected interest, and if so what process was his due? According to ***Mennonite*** and ***Jones***, citing ***Mullane v. Central Hanover Bank and Trust Co.,*** 339 U.S. 306, 313 (1950), "before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner notice and opportunity for hearing appropriate to the nature of the case." The decision of the Louisiana Supreme Court at issue herein upheld the Trial Court's findings that the Petitioner received notice of the pendency of a tax sale as a result of his delinquency and failed to pay his property taxes. Petitioner was not deprived of his constitutional right to obviate the tax sale by making payment thereof.

The second part of the test in ***Logan*** is what notice is due from the State before the taking of a property interest without first giving the putative owner an opportunity to present his claim of entitlement. Citing ***Parratt v. Taylor***,

451 U.S. 527 (1981) the ***Logan*** court emphasized that it was dealing with "a tortuous loss of . . . property as a result of a random and unauthorized act by a State employee . . . not a result of some established State procedure" 441 U.S. 541. Unlike the ***Logan*** case, wherein a State statute destroyed a complainant's property interest by operation of the law where a State action was required or else the property owner's interest is lost, the Louisiana tax sale regulatory scheme creates the right of redemption in favor of the tax debtor. If the tax debtor fails to exercise his right to redeem within three (3) years of the tax sale, that right terminates. This termination of the right to redeem is not the result of any State action. Rather, it is solely the result of the limited nature of the right and the debtor's own inaction.[3] Unlike the facts presented in ***Logan,*** the facts herein evidence no State action affecting the right of the Petitioner to redeem. The amendment to the tax sale statutes in 1997 simply mandated a notice by the Sheriff; however, such notice, as properly held by the Louisiana Supreme Court, has no due process implications. The failure to provide such notice is not a failure to provide a tax debtor with notice of any pending State taking.

II. A statute does not create a constitutional due process right, such rights are limited to the State action of taking.

The Due Process Clause of the Fourteenth Amendment provides that "no state shall . . . deprive any person of . . . property, without due process of law". Petitioner contends that he "was denied due process of law by the Sheriff's failure to afford him notice of the manner of redemption" as required

3. Prescription, as used in the civilian tradition is similar to the common law term "tolling".

by La. R.S. 47:2180(A)(1)(b) as amended in 1997. The Petitioner is not claiming that the State denied him protection without granting him appropriate procedural safeguards (i.e. notice of the impending tax sale), but rather that the amended statute categorically obligated the State to protect him by giving him notice of his right to redeem.

In ***Deshaney v. Winnebago County Department of Social Services, et al.,*** 489 U.S. 189, 195, the Court stated that nothing in the language in the Due Process Clause itself requires the State to protect the property of its citizens against invasions by private actors. The Due Process Clause is

> "phrased as a limitation on the **State's power to act,** not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of . . . life, liberty or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to insure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text."

Deshaney v. Winnebago County Department of Social Services, et al., 489 U.S. 189, 195. As in the ***Deshaney*** case, Petitioner argues that the statute mandating the Sheriff's notice of a right to redeem created a "special relationship" because the State knew that Petitioner's right of redemption would prescribe, thus creating an affirmative duty of the State enforceable through the Due Process Clause. Its failure to discharge that duty, as argued by Petitioner, is an abuse of government power that creates a new wrinkle, as to constitute a substantive due process violation. Such an argument was soundly rejected by this Court in ***Deshaney***. According to

the substantive due process analysis in ***Deshaney***, it is the State's affirmative act of taking of property which is the deprivation of property triggered by the protections of the Due Process Clause, not its failure to act to protect Petitioner's property interest against the tolling of prescription in favor of third parties.

The Due Process Clause of the Fourteenth Amendment is intended to secure an individual from the arbitrary exercise of the powers of government and to prevent governmental power from being used for purposes of oppression and to prevent the affirmative abuse of power. ***Paratt v. Taylor***, 451 U.S. 527, 549 (1981). The purpose of the Due Process Clause is to protect the people from the State, not to insure that the State protects rights flowing between two (2) citizens. The Framers of the Constitution were content to leave the extent of government obligation in the latter area to the democratic political process. ***Deshaney*** at 196.

III. Under Louisiana law, unlike most common law states, ownership transfers at the completion of the tax sale.

Under Louisiana property law, full and perfect ownership changes on the date of the tax sale. As such, RIPCO became the owner of the property at issue herein on June 30, 1995. All the cases cited by the Petitioner evidencing a violation of the Due Process Clause of the United States Constitution under various other State statutory schemes, fails to recognize the Louisiana civilian property right laws.

The Louisiana Civil Code contains several articles which set forth the civilian concepts of ownership as a bundle of rights in a thing. La. C.C. art. 476 states that one may have various rights in things: (1) ownership; (2) personal and

predial servitudes; and (3) such other real rights as the law allows. La. C.C. art. 477 defines ownership as the **right** that confers on a person direct, immediate and exclusive authority over a thing. The owner of a thing may use, enjoy and dispose of it within the limits and under the conditions established by law. Even though ownership is defined as the exclusive authority over a thing, the code recognizes that the right of ownership may be subject to dismemberment, thereby limiting the owner's use, enjoyment or right to dispose of the thing. La. C.C. art. 478 provides that "the right of ownership may be subject to a resolutory condition, and it may be burdened with a real right in favor of another person as allowed by law."

A sale is defined in the Civil Code under article 2439 as a contract whereby a person transfers ownership of a thing to another for a price in money. The thing, the price, and the consent of the parties are requirements for the perfection of a sale. The tax sale at issue in the present matter meets the statutory mandate for a sale to occur. As there is no dispute relative to the act or completion of a tax sale in the case at bar, the question of transfer of ownership at the completion of the tax sale is the jus legitmum pronounced by the Louisiana Supreme Court. In order to answer the question presented, the Court need look no further than La. C.C. art. 2456, which states:

> Ownership is transferred between the parties as soon as there is agreement on the thing and the price is fixed, even though the thing sold is not yet delivered nor the price paid.

The property at issue herein was seized and sold for delinquent taxes on June 12, 1995. The price was paid and the tax deed recorded on June 30, 1995. Therefore, on June 12, 1995, full ownership passed to RIPCO.

Further codal authority for the transfer of ownership at the completion of a tax sale is found in the Louisiana statutory scheme governing the collection of ad valorem taxes. A tax sale transfers ownership to the purchaser under La. R.S. 47:2183(A) which states:

> Each state tax collector and ex officio collector of state taxes, and the tax collectors of the municipal authorities of the various towns and city governments and political subdivisions throughout the state, shall execute and sign in person or by deputy, in the name of the state, or other taxing subdivision as the case may be, a deed of sale to purchasers of any real estate sold for taxes, in which he shall relate in substance a brief history of the proceedings had, shall describe the property, state the amount of the taxes, interest, and costs and the bid made for the property, and the payment made to him in cash, cashier's check, certified check, money order, or wire transfer, and **shall sell the property to the purchaser, with the right to be placed in actual possession thereof,** by order of a court of competent jurisdiction, and shall conclude the deed with the statement in boldfaced type that the property shall be redeemable at any time for the space of three years beginning on the day when the deed is filed for record in the conveyance office in the parish in which the property is situated. [Emphasis added]

La. R.S. 47:2185 further states:

> Upon the presentation of a certified copy of a tax deed for immovables to any judge of competent

> jurisdiction (such jurisdiction to be determined by the value of the immovables therein described and not the amount of the taxes), the judge shall in chambers grant an order of seizure and possession, commanding the sheriff to seize such property and place the purchaser in actual possession thereof; a writ of possession shall be issued thereon by the clerk, but the purchaser may take actual possession without such order, with the consent or acquiescence of the tax debtor or otherwise, provided no force or violence shall be used.

Unlike the cases of other State courts of last resort cited by Petitioner herein, the State of Louisiana, through the East Baton Rouge Parish Sheriff, completed its taking and was paid the delinquent taxes on the date of the tax sale. Upon completion of the sale, which transferred ownership to the property to the tax purchaser, the Petitioner became vested with a new limited, real right in the property: the right to redeem the property sold within three (3) years of the tax sale. The right, as a real right, was directly enforceable against the property by the Petitioner without any State action. The Petitioner needed only exercise the right by paying the delinquent taxes, costs and interests to the Sheriff. Failure to exercise the right within three (3) years results in loss of the right. The failure to exercise the right does not result in a loss of the property, as ownership of same was transferred at the 1995 Tax Sale. As the State taking is completed on the date of the tax sale, there exists no Fourteenth Amendment constitutional Due Process claim. The Court has never held that the State owes a citizen notice and an opportunity to be heard prior to the loss or termination of a private right in property as a result of the tolling of a statute of limitation, operation of laches, or operation of other similar rules regulating private property rights.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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